

Appl. No. 09/755,470
Amdt. dated July 17, 2006
Reply to Office Action of April 19, 2006

Remarks

The present request for reconsideration replies to the Official Action mailed April 19, 2006. That action made a new non-final rejection of the claims. The claims submitted September 1, 2004 were objected to as the heading at the top of the page incorrectly referred to another application. Claims 1, 7 and 10 were rejected under 35 U.S.C. 102(e) based on Ekberg U.S. Patent No. 7,003,282 (Ekberg). Claims 2, 3, 8 and 9 were rejected under 35 U.S.C. 103(a) over Ekberg in view of Feder et al. U.S. Patent Publication No. 2002/0089958 (Feder). Claims 4-6 were rejected under 35 U.S.C. 103(a) over Ekberg in view of Massarani U.S. Patent No. 6,393,484 (Massarani). Claims 11 and 12 were also rejected under 35 U.S.C. 103(a) over Ekberg in view of Massarani. Claim 13 was rejected over Ekberg and Massarani in further view of Feder. Claims 14 and 15 were rejected over Ekberg in view of Massarani and Feder in further view of Schuster et al. U.S. Patent No. 6,857,072 (Schuster).

Claim Objection

The Examiner is thanked for pointing out the obvious typographical error in the earlier heading. The heading in the present listing is now correct.

The Art Rejections

As addressed in greater detail below, Eckberg, U.S. Patent No. 7,003,282, is not prior art under Section 102(e). Consequently, the Official Action's rejections based thereupon should be reconsidered and withdrawn. Further, the Applicant does not acquiesce in the analysis of Eckberg and the other relied upon items made by the Official Action and respectfully traverses the Official Action's analysis underlying its rejections.

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Eckberg is based on an international application prior to November 29, 2000. MPEP § 706.02(a) provides as follows:

references based on international applications that were filed prior to November 29, 2000 are subject to the former (pre-AIPA) version of 35 U.S.C. 102(e) as set forth below.

Former 35 U.S.C. 102. Conditions for patentability: novelty and loss of right to patent.

A person shall be entitled to a patent unless --

* * * * *

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Taking the analysis step by step, Ekberg was based on an international application, namely PCT No. PCT/FI99/00565 filed June 24, 1999 which claimed priority of Finnish Application No. 981565 filed July 7, 1998. Consequently, it is clear that Ekberg is based on an international application filed prior to November 29 2000, and the former version of 35 U.S.C. 102(e) applies. Under that version, Ekberg has prior art effect only from March 8, 2001, the date paragraphs (1), (2), and (4) of Section 371(c) were satisfied as set forth on the face of Ekberg. March 8, 2001 is after the January 5, 2001 filing date of the present application and Ekberg is not prior art under Section 102(e).

In the interest of expediting the allowance of the present case to issuance, it is noted that the face of Ekberg makes note of PCT Pub. No. WO 00/02406 having a publication date of

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January 13 2000. This date is less than a year before the January 5, 2001 filing date of the present application.

Assuming arguendo that the Examiner intends to rely upon WO 00/02406 under 35 U.S.C. 102(a), a further declaration of the undersigned is submitted. This declaration when considered in conjunction with the previously submitted declarations to antedate previously relied upon items that were not in fact prior art shows the present invention was reduced to practice prior to January 5, 2001.

More specifically, Declarations of Steven Branigan and William Cheswick, the inventors of the present case, were previously submitted in conjunction with Declarations of Mr. Priest, and Mr. Grosse, the inventors' supervisor, and satisfactorily established that the inventions of claims 1-15 were reduced to practice prior to February 22, 2000, the filing date of Bahl U.S. Patent No. 6,834,341 (Bahl). The Exhibits to these declarations were submitted with their dates redacted as is permitted by the MPEP. As addressed in further detail below, the redacted date of Priest Declaration Exhibit A is before January 13, 2000 as established by Second Priest Declaration paragraph 4, and this fact in conjunction with the evidence previously established establishes that the present invention was reduced to practice before January 13, 2000. Consequently,
WO 00/02406 is not "prior" art.

Recap of Previous Examination and Prior Invention Proofs as Relevant to WO 00/02406

In a final Office Action mailed February 28, 2005, claims 1-15 were rejected as anticipated by Hagen U.S. Patent Application Publication No. 2002/0075844. In the Response

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filed April 28, 2005, the Declaration of Lowell Ross was submitted to establish Hagen was not prior art. Upon acceptance of this showing, rather than allowing all of the claims or making a new non-final action, a second final Office Action was mailed October 19, 2005.

In this action, claims 1-10 were rejected under 35 U.S.C. 02(e) based on Bahl et al. U.S. Patent No. 6,834,341 (Bahl), and the remaining claims were rejected under 35 U.S.C. 103(a) based upon Bahl and other items. Again, a response was filed requesting reconsideration. Declarations of Eric H. Grosse and Peter H. Priest were submitted in an effort to establish Bahl was not "prior" art. An Advisory Action was mailed December 29, 2005 as discussed in a telephone interview with Examiner Tran and then S.P.E. Gilberto Barron. Subsequently, an RCE was filed in conjunction with Declarations of Mr. Branigan and Mr. Cheswick, the inventors of the present case. The submitted proof was found to establish a priority before Bahl. Again, rather than promptly passing the claims, a new rejection was made.

With respect to antedating January 13, 2000, it is initially noted this date is only about five weeks prior to Bahl's February 22, 2000 filing date and would have been antedated previously if the Examiner had not engaged in a course of piecemeal examination of this case. In antedating Bahl, the inventors read the Declarations of Mr. Priest and Mr. Grosse and their corresponding exhibits. They confirmed that they had submitted a patent submission, Priest Declaration Exhibit A, **describing the operation of a working wireless network meeting the terms of claims 1-15 and reducing them to practice.** The date of this patent submission was redacted in the earlier filings, but Priest Second Declaration, paragraph 4, confirms that its date

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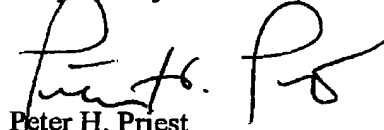
was before January 13, 2000 and hence the reduction to practice addressed by the Declarations of Mr. Branigan and Mr. Cheswick predates January 13, 2000 and WO 00/02046 is not "prior" art.

Claims 1-15 which have not been amended since the Amendment filed September 1, 2004 should now be promptly allowed. The present case has been pending since January 5, 2001. The MPEP makes clear that all grounds for rejections should be made at the earliest possible time. The Examiner has apparently exhaustively searched the present claims, not once, not twice, but at least three times with a fourth search having been made with respect to the originally filed claims prior to their last amendment.

Conclusion

All of the presently pending claims, as amended, appearing to define over the applied references, withdrawal of the present rejection and prompt allowance are requested. In the event any questions remain concerning this response, a telephone interview to include the Examiner's supervisor is respectfully requested.

Respectfully submitted,



Peter H. Priest
Reg. No. 30,210
Priest & Goldstein, PLLC
5015 Southpark Drive, Suite 230
Durham, NC 27713-7736
(919) 806-1600